FILED
SID J. WHITE
SEP 9 1992
CLERK, SUPREME COURT.
By ______ Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Appellant/Petitioner,

vs. Case No. 80,357

RONALD EUGENE DEHART,

Appellee/Respondent.

APPELLANT/PETITIONER'S INITIAL BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

This an appeal of right. By notice filed August 20, 1992, the State invoked this court's mandatory jurisdiction[1] to review a district court's decision declaring a legislative act (i.e., ch. 89-280, Laws of Florida) invalid. This act is a "state statute" for purposes of this Court's mandatory jurisdiction. ***See,*** Pinellas County Veterinary Medical Society, Inc. v. Chapman, 224 So.2d **307** (Fla. 1969)(directly reviewing trial court judgment holding a special act unconstitutional under Art. V, §4, Fla. Const. (1885), which conferred jurisdiction to review final judgments passing upon the validity of a "state statute").

The opinion below relies directly upon Johnson v. State, 589 So.2d 1370 (Fla. 1st DCA 1991). That case is pending before this court, and has been assigned case numbers 79,150/79,204. Oral argument is scheduled for November 2, 1992.

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[1] Art. V, §3(b)(1), Fla. Const.; Fla.R.App.P. 9.030(a)(1)(A)(ii). The State invoked the Court's discretionary jurisdiction to review decisions also certifying a question of great public importance, and certifying conflict.

STATEMENT OF THE CASE AND FACTS

Appellee/Respondent Ronald Eugene Dehart [herein "Appellee"] was convicted for grand theft of an auto. (R 161). He was sentenced as an habitual felon to 10 years. (R 175-8).

Before the First District, Appellee challenged only his sentence. That court vacated the sentence on the ground that ch. 89-280, Laws of Florida, violated the one-subject rule of Art. III, §6 of the Florida Constitution. In an opinion issued August 3, 1992, it certified the same question of great public importance[2] as was certified in Johnson v. State, 589 So.2d 1370 (Fla. 1st DCA 1991), *review pending,* case nos. 79,150 and 79,204 (oral argument set for November 2, 1992); and Claybourne v. State, 17 F.L.W. D1478 (Fla. 1st DCA June 11, 1992), *review pending,* case no. 80,157. The opinion below also certifies conflict with decisions by the Third and Fourth Districts.

Notice of appeal invoking this court's mandatory jurisdiction was filed August 20, 1992. The same notice invoked the court's discretionary jurisdiction to review decisions certifying questions or conflict.

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2 The question reads:

> Whether the ch. 89-280 amendments to section 775.084(1)(a)1, Florida Statutes (Supp. 1988), were unconstitutional prior to their re-enactment as part of the Florida Statutes, because [they were] in violation of the single-subject rule of the Florida Constitution. (slip op., p. 2)

SUMMARY OF THE ARGUMENT

ISSUE I: Preservation of Substantive Issue

Whether ch. 89-280, Laws of Florida, violates the one-subject rule in Art. III, §6 of the Florida Constitution was not raised before the trial court. The number of subjects in a legislative act cannot be fundamental error. Therefore, Appellee improperly raised the issue for the first time before the First District.

The First District had neither jurisdiction nor the discretion to entertain a non-fundamental error alleged for the first time on appeal. Its decision must be vacated, thereby upholding Appellee's sentence.

ISSUE 11: One-Subject Challenge to Chapter 89-280, Laws of Florida

Chapter 89-280, Laws of Florida, contains two components, one addressing habitual felons and career criminals; the other, repossession of automobiles. Both components logically relate to controlling crime. Chapter 89-280 does not violate Art. III, §6 of the Florida Constitution,

ARGUMENT

ISSUE I

WHETHER A CRIMINAL DEFENDANT'S RIGHT TO DUE PROCESS CAN BE DENIED MERELY BY THE NUMBER OF SUBJECTS IN A LEGISLATIVE ACT

The number of subjects in an otherwise proper legislative act (i.e., ch. 89-280, Laws of Florida) has nothing to do with an individual defendant's sight to due process, and cannot be fundamental error, Appellee's undisputed failure to raise a one-subject challenge before the trial court precluded review by the First District. Consequently, that court's decision on the merits must be vacated, thereby affirming Appellee's sentence.

Following Claybourne v. State, 17 F.L.W. D1478 (Fla. 1st DCA June 11, 1992), without explanation, the opinion below implicitly holds that violation of the two-subject rule is fundamental error. In Claybourne, the First District reasoned that the one-subject challenge to ch. 89-280 could be raised. for the first time on appeal, since that act "affects a central issue in the litigation." *Id.* The central issue, for the Claybourne panel, was the "term of imprisonment." *Id.* The mere length[3] of Claybourne and Appellee's sentences has never been at issue.

Claybourne relied on two old civil cases that have no relevance. The first case, Parker v. Town of Callahan, 115 Fla.

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[3] The length of Appellee's sentence could not be an issue since §775.084(4)(b)1 -- under which Appellee was sentenced -- authorizes imprisonment for life.

266, 156 So. 334 (Fla. 1934), involved a special act validating the town's tax rolls. The act's title did not give sufficient notice of the act's substance. *Id.* at 395. The second case, Town of Monticello v. Finlayson, 156 Fla. 568, 23 So.2d 843 (Fla. 1945), involved a general law authorizing a town to assess property for street and sidewalk improvements. How either of these decisions relates to a statute imposing enhanced sentences on recidivist felons is a mystery. How either decision relates to an individual defendant's right to due process is a greater mystery still. Claybourne made no attempt to answer the State's points as to what constitutes fundamental error; the opinion below blindly follows that case. For the reasons set forth herein, the number of subjects in a legislative act cannot be fundamental error.

This court need and should not reach the merits, Appellee did not raise this issue before the trial court. Therefore, the district court was without authority to rule on the merits, as violation of the one-subject rule cannot be fundamental error. It is a settled rule of appellate review that "[e]xcept in cases of fundamental error, an appellate court will not consider an issue unless it was presented to the lower court, [citations omitted]." Steinhorst v. State, 412 So.2d 332, 338 (Fla. 1982).

The meaning of "fundamental error" has been frequently addressed by this court and the district courts. In Sanford v. Rubin, 237 So.2d 134, 137 (Fla. 1970), this court reviewed the Third District's holding that a challenge to the constitutionality of a special act was cognizable for the first time on appeal as

fundamental error. Specifically, the district court held the act was unconstitutional because its title did not fully reflect the act's contents, contrary to Art, III, §16 of the Florida Constitution of 1885, (NOTE: §16 is now embodied in the current constitution as Art. III, 36, the provision at issue here.)[4] This court overruled the district court and rejected the proposition that constitutionality of the statute was fundamental and could be raised for the first time on appeal.

The Sanford court made two general points which deserve close attention. First, "'[f]undamental error,' which can be considered on appeal without objection in the lower court, is error that goes to the foundation of the case or goes to the merits of the cause of action." *Id.* Second, an "[a]ppellate court should exercise its discretion under the doctrine of fundamental error very guardedly." *Id.*

Sanford was a civil case. The same doctrine is applied in criminal cases. In Castor v. State, *365* So.2d 701 (Fla. 1978), the court reaffirmed the rule that contemporaneous objections were required and rejected the argument that the error was fundamental. In the context of jury reinstruction, the court reiterated that the doctrine of fundamental error must remain a "limited exception." *Id.* at 704. This court also declared that the error, to be

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[4] Section 6 reads in pertinent part:

> Laws.--Every law shall embrace but one subject end matter properly connected therewith, and the subject shall be briefly expressed in the title.

fundamental, must "amount to a denial of due process.'' *Id., citing* State v. Smith, 240 So.2d 807 (Fla. 1970).

This court has consistently limited the scope of fundamental error. *See,* Clark v. State, 363 So.2d 331, 333 (Fla. 1978)("We have consistently held that even constitutional errors, other than those constituting fundamental error, are waived. unless timely raised in the trial court. Sanford."). It was **even** more emphatic in Ray v. State, 403 So.2d 956, 960 (Fla. 1981):

> [F]or error to be so fundamental that it may he urged on appeal, though not properly presented below, the error must amount to a denial of due process. [citing Castor, *supra*].
>
> * * *
>
> We agree with Judge Hubbart's observation that the doctrine of fundamental error should be applied only in the rare cases where a jurisdictional error appears or where the interests of justice present a compelling demand for its applicability. Citing *Porter v. State,* 356 So.2d 1268 (Fla. 3d DCA)(Hubbart, J., dissenting), *remanded,* 364 So.2d 892 (Fla. 1978), *rev'd on remand,* 367 So.2d 705 (Fla. 3d DCA 1979).[5]

The cases holding and applying the above principles are many, and of long standing. Representative decisions include: Ellis v. State, 74 Fla. 215, 76 So. 698 (1917)("[I]t is suggested that the statute is unconstitutional. This question was not raised

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[5] In Porter, the issue was whether an unchallenged comment on a defendant's exercise of his right to silence was fundamental error. The district court, J. Hubbart, dissenting, originally held that it was, but reversed itself after remand for reconsideration in light of Clark. The point for this court to recognize is that the right to silence is unquestionably a fundamental constitutional right in the sense of "important" or "basic." However, in the context of unobjected to error, "fundamental error" is a legal term-of-art of exceptionally narrow scope.

in the trial court, and, as the statute is not patently in conflict with organic law, the suggestions . , . do not properly present the validity of the law for consideration by this court."); Silver v. State, 188 So.2d 300, 301 (Fla. 1966)(This court strongly criticized and refused to condone decision of district court to address constitutionality not raised in trial court); Whitted v. State, 362 So.2d 668, 672 (Fla. 1978)(failure of defendant to raise constitutionality of statutory provision under which convicted precludes appellate review). This court's attention is invited to Eutzy v. State, 458 So.2d 755 (Fla. 1984). There, the court held that the constitutionality of statutory authority to override jury recommendation in death penalty case not cognizable for first time on appeal. *Id.* at 757. If constitutionality of a statute providing for judicial override of a recommended life sentence is not fundamental error, the certainly the mere number of subjects in a legislative act cannot be such).

Davis v. State, 383 So.2d 620, 622 (Fla. 1980), is particularly instructive. It involved a nolo plea which purported to reserve the right to appeal the trial court's denial of motions to dismiss, On appeal, Davis challenged the constitutionality of

the statute under which he was convicted, This court, relying on Silver, *supra,* held there was no jurisdiction to consider the challenge:

> In the case *sub judice* the defendant entered a plea of *nolo contendere* and did not reserve any right to raise the constitutional question on appeal. The statute was not attacked at the trial level. Defendant has exercised his right to one appeal.. If he had desired to appeal to this Court, he only had to raise **a** constitutional question before the trial court and, in event of an unfavorable ruling, could have appealed directly to this Court. Not having followed this course, he is clearly wrong in his effort to activate the jurisdiction of this Court.
>
> For the reason stated, jurisdiction is declined and the judgment of the circuit court is not disturbed.

Id. ***See,*** Brown **v.** State, **376** So.2d 382, **385** (Fla. 1979)(reserved issue must be totally dispositive and that the constitutionality of a controlling statute is an appropriate issue for reservation.) Brown necessarily implies that the constitutionality of a controlling statute must be preserved.

The above holdings are also reflected in **the** First District's case law. ***See,*** State v. McInnes, **133** So.2d 581, *583* (Fla. 1st DCA 1961)("It is fundamental that the constitutionality of a statute may not generally be considered upon appeal unless the issue was raised and directly passed upon by **the trial** court."); Randi v. State, 182 So.2d 632 (Fla. 1st **DCA** 1966)(constitutionality of statute may not be raised for the first time on appeal:

The above holdings apply to the constitutionality of statutes under which the defendants were convicted. The same rule applies to sentencing statutes. *See,* Gillman v. State, 346 So.2d 586, 587 (Fla. 1st DCA 1977)(constitutionality of sentencing statute not cognizable when raised for first time on appeal), *See also,* Knight v. State, 501 So.2d 150 (Fla. 1st DCA 1987)(*ex post facto* and equal protection challenges to sentencing statutes not cognizable when raised for first time on appeal).

It is uncontroverted that Appellee did not raise, or otherwise preserve, the issue of whether ch. 89-280, Laws of Florida, was enacted in violation of the single subject rule in Art. III, §6, Fla. Const. Thus, the question is whether violation of the single subject rule is fundamental, thereby justifying consideration of the issue although not raised below.

The question answers itself. As declared by the decisions above, error that is fundamental deprives the defendant. of due process. The number of subjects in a legislative act does not remotely implicate any procedural or substantive due process rights.

Due process takes two forms, substantive and procedural. Substantive due process requires only that there be a rational basis for the relevant changes in ch. 89-280. State v. Saiez, 489 So.2d 1125, 1129 (Fla. 1986); State v. Olson, 586 So.2d 1239 (Fla. 1st DCA 1991). The rational basis for habitual offender statutes

is that society requires greater protection from recidivists and sentencing as habitual felons provides greater protection. Eutsey v. State, 383 So.2d 219, 223-224 (Fla. 1980). Appellee has not, and cannot, reasonably maintain the mere number of subjects in ch. 89-280 has anything to do with this unassailable purpose..

Procedural due process, in turn, has two aspects: reasonable notice and a fair opportunity to be heard. State v. Beasley, 580 So.2d 139 (Fla. 1991); Goodrich v. Thompson. 96 Fla. 327, 118 So. 60, 62 (1928). Here, Appellee was given reasonable notice and a fair opportunity to be heard. He has never maintained otherwise, or that the number of subjects in ch. 89-280 affected the fairness of his sentencing. Had Appellee thought differently, "he had only to raise a constitutional question before the trial court and, in the event of an unfavorable ruling, could have applied directly to this Court. Not having followed this course, he is clearly wrong in his effort to activate the jurisdiction of this Court." Davis, 383 So.2d at 622.

The State recognizes that the facial validity of a statute may be challenged for the first time on appeal. Trushin v. State, 425 So.2d 1126 (Fla. 1983). However, this is a very narrow exception to the rule that issues not raised in the trial court may not be raised on appeal, There are two aspects to the facial challenge: overbreadth and vagueness. Overbreadth only arises when the statute in question impinges on behavior protected by the First Amendment to the United States Constitution and by Art. I, §4

of the Florida Constitution. State v. Olson, 586 So.2d at 1243-44. There can be no suggestion here that the number of subjects in ch. 89-280 impinges on First Amendment rights. The same conclusion applies to facial vagueness. Nothing in the mere number of subjects in ch. 89-280 would cause a person of common intelligence to guess at the meaning of any particular substantive possession. Therefore, the exception noted in Trushin is factually and legally inapplicable.

Other rules and points of law support the proposition that a single subject challenge does not meet the criteria for fundamental error or facial invalidity. Single subject and title defects under Art. III, §6 are cured by the biennial reenactment of the Florida Statutes. State v. Combs, 388 So.2d 1029 (Fla. 1980); Belcher Oil Co. v. Dade County, 271 So.2d 118, 121 (Fla. 1972). If violation of Art. III, §6 were fundamental error, or constituted facial invalidity, reenactment could not cure either error.

Assuming that ch. 89-280 violates Art. III, §6, the error is not fundamental and does not cause either the statute or the act to be facially invalid. In view of the settled law that an appellate court will not entertain an issue or an argument not presented below unless the alleged error is fundamental or goes to the facial validity of the statute, Appellee here may not challenge the constitutionality of ch. 89-280. As this court held, in Davis, there is no jurisdiction to entertain such appeals. Since the

First District had no jurisdiction to review error that was neither fundamental nor preserved, its decision on the merits **must be** vacated, thereby affirming Appellee's sentence.

ISSUE II

WHETHER ALL THE PROVISIONS OF CH. 89-280, LAWS OF FLORIDA, RELATE TO CONTROLLING CRIME

Although the merits should not be reached, the St te **will** address the issue. To withstand an attack alleging the inclusion of more than one subject, various topics within a legislative enactment must be "properly connected." Art. 111, §6, Fla. **Const.** This term has been addressed many times, most recently in Burch v. State, 558 So.2d 1 (Fla. 1990). In upholding a broad criminal statute, this court found that each of the "three basic: areas"[6] addressed by ch. **87-243,** Laws of Florida, bore a "logical relationship to the single subject of controlling crime." *Id.* at **3.**

Chapter *89-280* contains two **basic** areas: (1) policies and penalties as to career criminals and habitual felons; and (2) repossession of motor vehicles. Both relate to **controlling** crime. They are properly connected and do not violate Art. III, §6, Fla. Const.

Elaboration is useful. Article III, §6, had long been extant in Florida's constitutions.[7] It is "designed to prevent

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6 The three areas were: (1) comprehensive criminal regulations and procedures, (2) money laundering, and (3) safe **neighborhoods.** *Id.* **a**t **3.**

7 ***See*** Commentary to Art. III, §6, noting that the 1968 version is "close in substance to Sections 15 and 16 of Art. III of the 1885 Constitution.'' 25A Fla.Stat.Ann. 656 (1991 ed.)

various abuses commonly encountered in the way laws are passed ... [such as] logrolling, which resulted in hodgepodge or omnibus legislation." Williams v. State, 459 So.2d 319 (Fla. 5th DCA 1984), *dismissed,* 458 So.2d 274 (Fla. 1984). ***See,*** Burch v. State, *supra* at 2 (noting that the purpose of Art. 111, 66 is to prevent duplicity of legislation and to prevent a single enactment from becoming a cloak for dissimilar legislation),

At the outset, the problems of logrolling are not so compelling or frequent in criminal legislation. To the contrary, the fact that ch. 87-243 was designed to be a comprehensive response to burgeoning drug crime led the Burch court to uphold that act. *See* id. at 3 (simply because "several different [e.s.] statutes are amended does not mean more than one subject is involved.").

The repossession provisions of ch. 89-280 amend. part I of ch. 493, Florida Statutes.[8] That part, entitled "Investigative and Patrol Services," addresses private conduct (i.e., investigative and security services) normally provided by law enforcement officers.

The changes in the second basic area of ch. 89-280 were necessitated by problems with repossession conducted by private individuals. The problems rose to criminal significance, as

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[8] Chapter 493 was repealed, reenacted and renumbered by ch, 90-364, Laws of Florida. For convenience, all cites to ch. 493 are to the 1989 version, thus corresponding to the statutory section numbers in ch. 89-280.

violations of Part I of Chapter **493** are first-degree misdemeanors. *See*, §493.321 (1989).

Chapter **493**, Part I, is also designed to protect the public against abuse by repossessors, etc., and provides criminal penalties.[9] The habitual felon statute is also designed to protect the public against repeat felons.

This court has consistently held that the Legislature must be accorded wide latitude in the enactment of laws. Therefore, Art. 111, §6, of the Florida Constitution must not be used to deter or impede legislation by requiring laws to be unnecessarily restrictive in their scope and operation. State v. Lee, 356 So.2d 276, 282 (Fla. 1978). *See*, Smith v. City of St. Petersburg, 302 So.2d 756, 758 (Fla. 1974)("For a legislative enactment to fail, the conflict between it and the Constitution must be palpable.").

In Bunnell v. State, 459 So.2d 808 (Fla. 1984), this court invalidated 81, ch. 82-150, Laws of Florida, as having "no cogent relationship" (id. at 809) with the remainder of that act. Specifically, the subject law reduced membership of the Florida Criminal Justice Council, and created the criminal offense of obstructing justice through false information. Chapter 89-280, in contrast, includes no such disparity. There is a cogent

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[9] Part I also addresses investigative and patrol issues, and detection of deception. For example, §493.30(4) defines "private investigation" to include, among other activities, the obtaining of information relating to certain crimes; the location and recovery of stolen properly; the cause, origin, or responsibility for fires, etc.; and the securing of evidence for use in criminal (and civil) trials. These duties are quasi-law enforcement in nature,

relationship between its habitual or career felon provisions, and its repossession provisions. Both respond to frequent incidence of criminal activity; both seek to deter repeat offenses. Both seek to protect the public, Repossessors and investigators, although private individuals, are performing the quasi-law enforcement duties. The parts of ch. 89-280 are sufficiently related to survive a two-subject challenge, even though ch. 89-280 is not a comprehensive crime bill like the one upheld in Burch, *supra*. Chapter 89-280 contains but one subject. Two of three district courts have agreed with the State, contrary to the opinion below. Beabrum v. State, 595 So.2d 254 (Fla. 3d DCA 1992); Jamison v. State, 583 So.2d 413 (Fla. 4th DCA 1991), *rev. denied,* 591 So.2d 182 (Fla. 1991); McCall v. State, 583 So.2d 411 (Fla. 4th DCA 1991), *juris. accepted,* 593 So.2d 1052 (Fla. 1992).

If Appellee has identified a two-subject problem in ch. 89-280, that problem was cured by the 1991 Legislature. Chapter 89-280 was enacted, obviously in 1989. All 1989 changes to the Florida Statutes have been adopted and enacted as the official statutory law. See, 91-144, Laws of Florida, effective May 2, 1991 (attached as Appendix B)(codified in §11.2421, Florida Statutes [1991]).[10]

Through ch. 91-144, the Legislature reenacted all of ch. 89-280, as codified. This reenactment cured any constitutional

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10 The State acknowledges that Appellee's current offenses were committed on July 11, 1990 (R 106); which date falls between the effective date (10/1/89) of ch. 89-280 and the effective date (5/2/91) of ch. 91-144.

defect arising from inclusion of more than one subject in the original act. State v. Combs, 388 So.2d 1029 (Fla. 1990). The reason is obvious. Article I, §6 applies to acts of the Legislature, not to the reenacted (codified) statutes. *Id.* at 1030. "Once **reenacted** as a portion of the Florida Statutes, it [the statutes at issue] was not subject to challenge under article III, section 6." *Id.* As of May 2, 1991, ch. 89-280 is constitutional as to a two-subject challenge. ***See,*** Thompson v. Inter-County Tele. & Tel. Co., 62 So.2d 16 (Fla. 1952)(*en banc*)(tax structure with defective title valid from time of revision). Therefore, §775.084, Florida Statutes (1989), is no longer subject to a two-subject challenge.

To sum: this issue is not preserved for review, as it was not raised below and does not involve fundamental error. If preserved, ch. 89-280 includes only one subject. Moreover, the Legislature has cured any two-subject problem. The State specifically requests this court, should it agree with Appellee on the merits, to recognize the curative effect of ch. 91-144; and to state that any two-subject challenge to ch. 89-280 must be predicated on an offense occurring from October 1, 1989 (effective date of ch. 89-280) through May 2, 1991 (effective date of ch. 91-144). ***See,*** Tims v. State, 592 So.2d 741 (Fla. 1st DCA 1992)(the "narrow holding" of Johnson *[supra]* is predicated, in part, upon an offense committed between October 1, 1989, and May 2, 1991).

CONCLUSIOM

Based on the argument in Issue I, the opinion below must be vacated and Appellee's sentence affirmed. Alternatively, based on the argument in Issue 11, this court must declare ch. 89-280 not violative of the one-subject rule; answer the certified question in the negative; and affirm Appellee's sentence.

Respectfully submitted,

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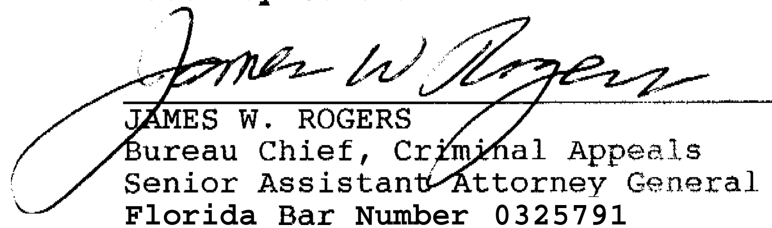
Attorney General



JAMES W. ROGERS
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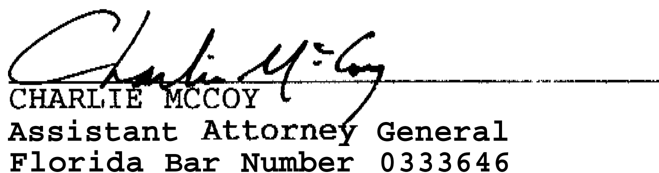

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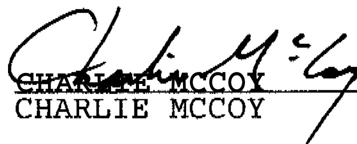
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Appellant's Initial Brief on the Merits has been furnished by U.S. Mail to MR. P. DOUGLAS BRINKMEYER, Assistant Public Defender, Office of the Public Defender, Second Judicial Circuit of Florida, Leon County Courthouse, Fourth Floor North, 301 South Monroe Street, Tallahassee, Florida 32301, this 9th day of September, 1992.



CHARLIE MCCOY

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Appellant,

vs. Case No. 80-357

RONALD EUGENE DEHART,

Appellee.

APPENDIX TO
APPELLANT/PETITIONER'S INITIAL BRIEF
ON THE MERITS

Opinion Below

91-111021-TLR AG

IN THE DISTRICT COURT OF APPEAL

FIRST DISTRICT, STATE OF FLORIDA

RONALD EUGENE **DEHART,**

Appellant,

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF **IF FILED,**

v.

CASE NO. 91-1282

STATE OF FLORIDA,

Appellee.

Docketed 8-4-92 Florida Attorney General

AUG 0 4 1992

Opinion filed August 3, 1992.

An appeal from the Bay County Circuit Court, Dedee S. Costello, Judge.

Nancy **A.** Daniels, Public Defender; P. Douglas Brinkmeyer, Assistant Public Defender, Tallahassee, for Appellant.

Robert **A.** Butterworth, Attorney General; Charlie McCoy, Assistant Attorney General, Tallahassee, for Appellee.

PER CURIAM.

We reverse appellant's habitual offender sentence **and** remand for resentencing within the sentencing guidelines. **As** we did in Johnson v. State, 589 So.2d 1370 (Fla. **1st** DCA **1991),** and ______ v. ______, 17 F.L.W. D1478 (Fla. **1st** DCA June **11,** 1992), we certify the following question as one of great public importance. Additionally, we note conflict between the cases cited above **and** Beaubrum v. State, 595 So.2d 254 (Fla. 3d DCA 1992), Jamison v. State, 583 So.2d 413 (Fla. 4th DCA), rev. denied, 591 So.2d 182 (Fla. 1991), McCall v. State, 583 So.2d 411

(Fla. 4th DCA 1991), _juris. accepted_, 593 So.2d 1052 (Fla. 1992), and _Gilmore v. State_, 597 So.2d 374 (Fla. 4th DCA 1992).

> WHETHER THE CHAPTER 89-280 AMENDMENTS TO SECTION 775.084, FLORIDA STATUTES (SUPP. 1988), WERE UNCONSTITUTIONAL PRIOR TO THEIR REENACTMENT AS PART OF THE FLORIDA STATUTES, BECAUSE IN VIOLATION OF THE SINGLE SUBJECT RULE OF THE FLORIDA CONSTITUTION.

ERVIN, MINER and WEBSTER, JJ., CONCUR.